

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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BUCKINGHAM PROPERTIES, LLC, and
MONROE CLOVER PLAZA, LLC,

Civil Action No.

Plaintiffs,

-against-

NOTICE OF REMOVAL

BRUEGGER'S ENTERPRISES, INC., and LIBERTY
MUTUAL FIRE INSURANCE COMPANY,

Defendants.
-----X

M A D A M S / S I R S:

Defendant LIBERTY MUTUAL FIRE INSURANCE COMPANY ("Liberty Mutual") by its attorneys, JAFFE & ASHER LLP, respectfully alleges as follows:

1. On or about December 7, 2023, plaintiffs BUCKINGHAM PROPERTIES, LLC ("Buckingham") and MONROE CLOVER PLAZA, LLC ("Monroe") commenced an action entitled Buckingham Properties, LLC, and Monroe Clover Plaza, LLC v. Bruegger's Enterprises, Inc., and Liberty Mutual Fire Insurance Company, Index No. E2023014699, in the Supreme Court of New York, County of Monroe, by the filing of a Summons and Complaint. A copy of the Summons and Complaint filed in this action is annexed hereto as Exhibit "1" and Exhibit "2", respectively.

2. Upon information and belief, Liberty Mutual was served with the Summons and Complaint on or about December 22, 2023, via service on the NYS Department of Financial Services.

3. The Complaint alleges that Liberty Mutual breached a contract when Liberty Mutual failed to provide coverage to Buckingham and Monroe under a commercial general liability insurance policy and a commercial general liability umbrella policy issued by

Liberty Mutual to Bruegger's Enterprises, Inc. ("Bruegger's"), for an underlying personal injury action entitled, Patrick Walsh and Christine Walsh v. Bruegger's Enterprises, Inc., Index No. E2021003013, pending in the Supreme Court of the State of New York, County of Monroe (the "Underlying Action"). Buckingham and Monroe allege that, pursuant to a lease purportedly entered into by Monroe, as landlord, and Bruegger's, as tenant, Bruegger's agreed to obtain liability insurance and name them as additional insureds on its policies. Buckingham and Monroe seek monetary damages for breach of contract, including reimbursement of any past and future defense costs incurred in the defense of the Underlying Action, and a declaratory judgment that Liberty Mutual owes Buckingham and Monroe a primary duty to defend and indemnify them for the Underlying Action.

4. By Stipulation dated January 5, 2024, Buckingham and Monroe agreed that they do not assert any causes of action in the Complaint against Bruegger's and that Bruegger's was named in the within action solely as an interested nominal party. A copy of the Stipulation is annexed hereto as Exhibit "10".

5. This Notice of Removal is being filed by Liberty Mutual within thirty (30) days of Liberty Mutual's first notice of the Summons and Complaint and is timely filed pursuant to 28 U.S.C. §§ 1441 and 1446.

6. Liberty Mutual's time to move, answer, or otherwise respond to the Complaint has not expired.

7. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because, upon information and belief, (a) the amount in controversy exceeds \$75,000; and (b) Liberty Mutual and Bruegger's, on the one hand, and all members of Buckingham and Monroe, on the other hand, are citizens of different states.

8. Upon information and belief, and at all relevant times, Buckingham was, and still is, a limited liability company organized under the laws of the State of New York, with its principal place of business located at 259 Alexander Street, Rochester, New York 14607.

9. Upon information and belief, and at all relevant times, Monroe was, and still is, a limited liability company organized under the laws of the State of New York, with its principal place of business located at 259 Alexander Street, Rochester, New York 14607.

10. Upon information and belief, and at all relevant times, Bruegger's was and still is, a Delaware corporation, with its principal place of business located at 1720 S. Bellaire Street, Denver, Colorado 80222.

11. At all relevant times, Liberty Mutual was, and still is, a stock insurance company organized under the laws of Wisconsin, with its principal place of business located at 175 Berkeley Street, Boston, Massachusetts.

12. Written notice of the filing of the Notice of Removal has been given to Buckingham, Monroe, and Bruegger's, and Liberty Mutual shall file the notice with the Clerk of the Supreme Court of the State of New York, County of Monroe, as required by law.

13. Bruegger's, by its counsel Scott Festin, Esq. of Donna Law Firm, P.C., consents to the removal of the within action to this Court.

14. An Index Identifying Each Document Filed and/or Served in the State Court is annexed hereto as Exhibit 11. These documents are annexed hereto as:

Exhibit 1.: Summons, with filing receipt [NYSCEF Doc. No. 1];

Exhibit 2.: Complaint, with filing receipt [NYSCEF Doc. No. 2];

Exhibit 3.: Exhibit - A: Underlying Action, with filing receipt [NYSCEF Doc. No. 3];

Exhibit 4.: Exhibit - B: Walsh EBT Transcript, with filing receipt

[NYSCEF Doc. No. 4];

Exhibit 5.: Exhibit - C: Lease Agreement, with filing receipt [NYSCEF

Doc. No. 5];

Exhibit 6.: Exhibit - D: LMIC CGL Policy, with filing receipt [NYSCEF

Doc. No. 6];

Exhibit 7.: Exhibit - E: LMIC CGL - Umbrella, with filing receipt

[NYSCEF Doc. No. 7];

Exhibit 8.: Exhibit - F: Initial Demand, with filing receipt [NYSCEF Doc.

No. 8];

Exhibit 9.: Exhibit - H [sic]: Follow-up requests, with filing receipt

[NYSCEF Doc. No. 9]; and

Exhibit 10.: Exhibit - Stipulation - Other, with filing receipt [NYSCEF

Doc. No. 10].

15. Liberty Mutual has not answered, moved or otherwise responded to the Summons and Complaint and no other proceedings have occurred heretofore in this action.


16. No previous application for the relief requested herein has heretofore been made.

WHEREFORE, defendant LIBERTY MUTUAL FIRE INSURANCE
COMPANY, respectfully requests that this action be removed to this Court.

Dated: White Plains, New York
January 12, 2024

Respectfully submitted,

JAFFE & ASHER LLP

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